Please note that the comments expressed herein are solely my personal views

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**- 17 CFR Part 270**
**- File No. S7-35-11**
**- Treatment of Asset-Backed Issuers under the Investment Company Act**

Dear Sir.

Thank you for giving us the opportunity to comment on your Advance Notice of Proposed Rulemaking: Treatment of Asset-Backed Issuers under the Investment Company Act.

The Securities and Exchange Commission (SEC) is proposing amendments to Rule 3a-7 under the Investment Company Act of 1940 (Act), the rule that provides certain asset-backed issuers with a conditional exclusion from the definition of investment company. Amendments to Rule 3a-7 that the SEC may consider could reflect market developments since 1992, when Rule 3a-7 was adopted, and recent developments affecting asset-backed issuers, including the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) and the SEC's recent rulemakings regarding the asset-backed securities (ABS) markets. The SEC is also withdrawing its 2008 proposal to amend Rule 3a-7, which was published at 73 FR 40124 (July 11, 2008).

Rating requirements

It was reasonable, when Rule 3a-7 was adopted, to assume that NRSROs, in providing credit ratings for fixed-income securities of asset-backed issuers, typically expected the issuers to have certain structural safeguards. The SEC viewed these safeguards as addressing investor protection under the Act. However, Dodd-Frank requires the SEC to review, and where appropriate, remove references to credit ratings in its regulations, particularly because such

references may encourage investors to place undue reliance on (NRSRO) credit ratings.[1] Although the SEC emphasizes that "the rating requirement [was] not intended to address investment risks associated with the credit quality of a financing",[2] I would recommend that this roundabout and proxy review of asset-backed issuers' structures and operations should be removed and replaced with a more open and explicit review requirement, in order to more clearly, transparently and efficiently address the relevant investor protections afforded by the Investment Company Act.

Structure and operations of the issuer

I agree that the possibility of abusive practices, such as self-dealing and overreaching by insiders, misvaluation of assets, and inadequate asset coverage, exists in the context of an asset-backed issuer using the exclusion provided by Rule 3a-7. I accept that this could be mitigated by imposing specific requirements or limitations on the structure and operations of an asset-backed issuer relying on the rule, in order to prevent these potential types of abuses from occurring. However, such detailed requirements, limitations and other rules could stifle innovation and competition in this arena. They also tend to be static and incomplete and therefore open to abuse. Therefore I would rather recommend that you should take a more principles-based approach here, for example by requiring the parameters of the issuer's organisation and operations to be clearly set forth in its organisation documents, and requiring an independent review of the completeness and veracity of that documentation. I will discuss independent reviews in more detail below.

Independent review

The above-mentioned issues and concerns could be adequately addressed by requiring, in all cases, an independent review of the asset-backed issuer and its structure and intended operations prior to the sale of the fixed-income securities. A qualified and independent review would be sufficient to address Investment Company Act-related concerns, and would provide an objective and detached basis for evaluating and confirming whether the asset-backed issuer was structured and would be operated in a manner such that the expected cash flow generated from the underlying assets, would likely allow the asset-backed issuer to have the cash flow at times and in amounts sufficient to service expected payments on the fixed-income securities. The independent evaluator should be required to have expertise and experience in structuring and evaluating asset-backed securities, and should be independent of the issuer.[3] I would also support that the issuer should include the independent evaluator's opinion as an

[1] Other proxies exist for assessing credit risk, for example; credit spreads, prices and yields, default statistics, priorities and enhancements etc.

[2] Quoted in footnote 38 of the Advanced Notice of Proposed Rulemaking.

[3] I note that the 2011 ABS Re-proposal suggested potential independence requirements for an independent evaluator. Similar requirements would be appropriate in the context of Rule 3a-7. In fact I would suggest that the independent review promulgated in the 2011 ABS Re-proposal should be as consistent as possible with the independent review proposed here, so that just one review could satisfy both purposes.

exhibit to its registration statement.[4] Finally, the prospectus should include such information about the independent evaluator that would allow investors to make an informed judgement on the quality and suitability of the evaluation. Such information should, as a minimum, include the contact details of the independent evaluator, its relevant experience with evaluating ABS, the compensation received for performing the review and a statement of its independence from the issuer.

Preservation and safekeeping of eligible assets and cash flows

The investor clearly carries an unnecessary risk, in that the asset-backed issuer's assets and cash flows might be endangered, if the servicer or trustee commingles them with its own assets, or if the cash flow is invested in a speculative manner. This is clearly unacceptable, and requires an effective regulatory response. For example, the servicer should be required to keep the cash flow in a segregated account prior to transferring the cash flow to the trustee, regardless of whether the servicer would be required to transfer the cash flow to the trustee within a prescribed time period. This is a cost-effective safeguard that would adequately protect the cash flows.

Another important safeguard is a restriction on how the cash flows may be invested. I would strongly recommend that cash flows should be required to be invested in unencumbered, liquid financial assets such as cash and highly liquid securities. I would not propose that this rule should also limit who may receive the benefit of the returns of such investment, as long as this is clearly and adequately disclosed, as this is clearly a competitive and market issue, rather than one of investor protection.

Other issues

Rule 3a-7(a)(3) concerns the acquisition and disposal of eligible assets. I would suggest that this rule adequately precludes activities "that do not in any sense parallel typical 'management' of registered investment company portfolios",[5] and therefore I do not propose any regulatory changes here.

It is true that certain companies may operate as investment companies and avoid meeting the definition of investment company in the Investment Company Act. It is also true that certain asset-backed issuers rely on the weaker exclusion from the definition of investment company in Section 3(c)(5) of the Act, which is not subject to any conditions specifically addressing the Investment Company Act-related concerns presented by asset-backed issuers, rather than on the conditional Rule 3a-7. I strongly prefer substance over form. Therefore I would generally recommend that regulation under the Act should apply to such entities that are in substance investment companies, in order that investors would receive the adequate protections intended by the Act.

[4] Thereby requiring the independent evaluator to consent to being named as an "expert" in the registration statement and being subject to potential liability under Section 11 of the Securities Act.

[5] Quoted in Section III.A.3 of the Advanced Notice of Proposed Rulemaking.

A business development company (BDC) is also excluded from the definition of investment company by Rule 3a-7. Therefore a BDC might seek to treat a Rule 3a-7 issuer as an eligible portfolio company for the purposes of satisfying its investment requirements under the Act. I agree with the SEC[6] that Rule 3a-7 issuers are not the type of small, developing and financially troubled businesses in which Congress intended BDCs primarily to invest, and therefore I support that Rule 3a-7 should be amended to expressly provide that an issuer relying on Rule 3a-7 is not an eligible portfolio company.

Yours faithfully

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[6] See Section III.B.2 of the Advanced Notice of Proposed Rulemaking.